IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

W.P.(C).No.30141 of 2006(S)

PETITIONER:-

1. MINOY JAMES, S/O.V.J. JAMES,
   AGED 34 YEARS, VADAKAKKATH HOUSE,
   47/1041 E, VADUTHALA, KOCHI-23.

2. P.A. GLADWIN, S/O.P.D.ANTONY,
   AGED 36 YEARS, PAYYAPPILLI HOUSE,
   DON BOSCO ROAD, VADUTHALA, KOCHI-23.

3. JOSEPH P.R., S/O.P.J. RAPHEL,
   AGED 44 YEARS, PAYYAPPILLIL HOUSE,
   VATHUTHALA, KOCHI-23.

4. V.J. NELSON, S/O.JOSEPH AUGUSTINE,
   AGED 69 YEARS, VADAKAKKATH HOUSE,
   VADUTHALA KOCHI-23.

BY ADV. SRI.DENIZEN KOMATH
SRI.BINCE PAUL

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY
   ITS SECRETARY, MINISTRY OF RAILWAY,
   NEW DELHI.

2. STATE OF KERALA, REPRESENTED BY
   ITS CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

4. GREATER COCHIN DEVELOPMENT AUTHORITY,
   (GCDA), REPRESENTED BY ITS CHAIRMAN,
   ERNAKULAM.

5. COCHIN PORT TRUST,
   REPRESENTED BY ITS CHAIRMAN,
   WILLINGDON ISLAND, COCHIN.

6. RAIL VIKAS NIGAM LTD., (RVNL),
   REPRESENTED BY ITS ADDITIONAL GENERAL
   MANAGER, MYLAPORE, CHENNAI-04.

R2 & R3 BY GOVERNMENT PLEADER SRI.T.B.HOOD.
R1 & R6 BY STANDING COUNSEL SRI.ALEXANDER THOMAS.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2006, THE COURT ON 20/11/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. & P.R.Raman,J.

W.P.(C).No.30141 of 2006-S

Dated, this the 20th day of November, 2006

JUDGMENT

V.K.Bali,C.J.

This writ by way of public interest litigation has been filed seeking directions to respondents to consider Alignment-1 for study alike other alignments, including Alignment-2, with the 6th respondent and take a final decision thereof, based on detailed comparative study of all these alignments in depth. The petitioners also seek writ in the nature of mandamus directing respondents to forbear themselves from proceeding with their intention to favour Alignment-2 and the implementation thereof pending consideration of the feasibility and expert study of Alignment-1. The facts on which directions as asked for and as mentioned above are sought to rest would reveal that the rail connectivity for the International Container Transshipment Terminal at Vallarpadam is vested with Cochin Port Trust, the 5th respondent herein. The preliminary Engineering and Traffic Survey has finalised an alignment which starts from Edappally

Railway Station, running through Vaduthala and Panchalam area proceeding towards old Ernakulam Railway Goods (ERG) and turn towards Vallarpadam through GIDA land. A site visit by experts recommended for a Techno Economic Study of four alternative alignments to finalise the most feasible and acceptable alignment. This task was entrusted with the 6th respondent in the month of May, 2005. In the process, four alignments were tabled and evidently Alignment-1 was found most feasible in terms of cost as well as number of houses that were affected. It is the case of the petitioners that without any study results or survey reports, the higher ups of political hierarchy, supported by official bureaucrats, decided to avoid Alignment-1 arbitrarily. The decision to avoid Alignment-1 even for study and opting Alignment-2, which is more expensive and inconvenient when compared with Alignment-1 causing huge loss to the public exchequer at large and further causing most inconvenience to the residents in that area was taken arbitrarily. The State Government had assured the petitioners to consider authentically the relevancy of Alignment-1 in comparison with Alignment-2

during the proceedings before finalisation of the alignment. Even though respondents are estopped from deviating against the assurance rendered to the citizen strata, hasty steps are seen adopted to uphold Alignment-2 illegally and arbitrarily.

2. The petitioners have averred that the task of finalisation of alignment was entrusted with the 6th respondent in the month of May, 2005. The total cost of the four identified alignments was worked out. The cost included the land acquisition cost as well. The cost of Alignment-1 was Rs.194.635 crores and the number of houses affected are 78 and the cost of Alignment-2 was Rs.245.721 crores and the number of houses affected are 78. The petitioners gathered details with regard to cost involved in all the alignments and the houses to be affected and other details by seeking information under the Right to Information Act, 2005. No other data has been produced on record, nor any decision taken by any authority favouring Alignment-1 has been placed on records, even though it is averred that despite Techno Economic Study Report of 6th respondent finding Alignment-1 as the most economical and

feasible, the respondents have decided unilaterally not to propose Alignment-1 for the project. However, the petitioners also learnt once again from information supplied under the Right to Information Act, 2005 that there was a meeting held on 15th October, 2005 regarding the alignment of rail connectivity to Vallarpadam under the auspices of Chief Minister of State and it was first decided to carry out further study of all the four alignments to finalise the most feasible and acceptable alignment. Subsequently, discussions were held and opinions of those who presided over that meeting were dealt with. In the finality of such discussions, a mala fide and arbitrary decision was taken by the leaders of various political factions ruling out Alignment-1 even for a study in view of self projected and adversely claims as stated above. From the minutes of the meeting, it is the case of the petitioners, it can be understood that respondents came up for the meeting with a pre-conceived notion to avoid Alignment-1. None of the grounds put forward by respondents would satisfy the limits of understanding of a common man. The photo copy of the minutes of the meeting held

on 15.10.2005 has been placed on record as Exhibit P2.

3. We have gone through Exhibit P2, minutes of meeting dated 15.10.2005. The meeting under the auspices of Chief Minister of the State was attended by Minister of Fisheries and Sports, Minister of Industries and Information Technology, Members of Parliament, Members of Legislative Assembly, Worshipful Mayor, Chairman of Greater Cochin Development Authority and other officials and dignitaries representing various organisations and a detailed discussion was made as mentioned in Exhibit P2. Discussion was made with regard to Alignment-1 as thought proper by Cochin Port Trust, but while discussing the same it has been mentioned that the same was not desirable to the People's representatives and District Administration as the said alignment would affect the Bird Sanctuary, public utilities like hospital, school, etc. The matter was discussed at higher levels and after a site visit, it was decided to carry out a Techno Economic Study of four alternative alignments for finalising the most feasible and acceptable alignment and the task was entrusted with M/s.Rail Vikas Nigam Ltd. It has submitted the

report and the salient features of the proposal were also presented. Alignment-2 was found least disturbance to the public, although the cost was slightly higher than alternative Alignment-1, which was not considered feasible as it would cause adverse impact on the bird sanctuary and public institutions like hospital, school, etc.

4. We have heard learned counsel for the petitioners and examined the records of the case. We find no material whatsoever placed on the record that may show Alignment-1 better than Alignment-2. The mere fact that initially Alignment-1 was favoured is not conclusive of the fact that the same must necessarily be better than Alignment-2. But for showing more cost for Alignment-2, nothing, as mentioned above, has been placed on record that may show Alignment-1 to be more feasible than Alignment-2. The decision to prefer Alignment-2 was arrived at after the matter was entrusted to an expert body and ultimate decision has been taken by a high powered committee, consisting of all concerned including experts. Matters, such as the one in hand, is best suited to be decided by expert bodies and the High

Court in its jurisdiction under Article 226 of the Constitution of India would not normally interfere. The mere fact that Alignment-2 would cost more money is not enough to set at naught the decision taken by high powered committee. This aspect was alive to the mind of the high powered committee, but was offset with other considerations, as mentioned above, which too are relevant. Surely, least disturbance to the public and saving a Bird Sanctuary, public utilities like hospital, schools, etc. are not insignificant matters and could well be a reason good enough to set off the cost involved in the matter.

Finding no merit in this petition, we dismiss the same in limine.

Sd/-
V.K.Bali
Chief Justice

Sd/-
P.R.Raman
Judge

vku/-

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